

AMENDED IN ASSEMBLY JUNE 26, 2012

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 23, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1500

Introduced by Senator Lieu

February 24, 2012

An act to amend Sections 597.1 and 597.9 of the Penal Code, relating to animal protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1500, as amended, Lieu. Seized and abandoned animals: full costs: forfeiture.

Existing law provides that the cost of seizing, caring for, and treating any stray, abandoned, or endangered animal seized pursuant to specified provisions regarding the failure to care for animals, or pursuant to a search warrant, shall constitute a lien on the animal and that the animal shall not be returned to its owner until the charges are paid. Existing law provides that, if these charges are not paid within 14 days of the seizure, or if an owner fails to pay charges permitted, as specified, and take possession of the animal within 14 days of notice of availability of the animal to be returned, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer.

Existing law also provides that no animal properly seized pursuant to these provisions shall be returned to its owner until, in the determination of the seizing agency or the hearing officer, the animal

is physically fit, or the owner can demonstrate that he or she can and will provide the necessary care. Existing law requires, when an officer seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the safety of others, that prior to the commencement of any criminal proceedings, the officer provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

Existing law authorizes the court to order, as a condition of probation, that a person convicted of violating these provisions be prohibited from owning, possessing, caring for, or residing with, animals, and in the event of the acquittal or final discharge without conviction of the arrested person, the court is required, on demand, to direct the release of seized or impounded animals upon a showing of proof of ownership.

The bill would, if an owner fails to pay the charges and take possession of the animal within 14 days of notice of availability of the animal to be returned, require that the animal be deemed to have been abandoned, and would make the animal the property of the seizing agency, deleting the provision specifically authorizing the agency to dispose of the animal.

The bill would also authorize a seizing agency or prosecuting attorney, *in the case of adoptable cats and dogs*, prior to final disposition of any criminal charges against the owner of an animal, to file a petition in the criminal proceeding requesting the court to issue an order forfeiting the animal to the city, county, or seizing agency prior to the final disposition of the criminal charge. The bill would require notice and a hearing, as specified, and would impose upon the petitioner the burden of establishing, ~~by a preponderance of the evidence~~ *beyond a reasonable doubt*, that even if the owner is acquitted of the charges, he or she will not be legally permitted to retain the animal. If the petitioner meets his or her burden, the bill would require the court to order the immediate forfeiture of the animal as sought by the petition.

The bill, in the event of the acquittal or final discharge without conviction of the arrested person, would require the court, on demand, to direct the release of seized or impounded animals upon a showing of proof of ownership, ~~proof that specified charges have been paid, and proof of the owner's legal status to retain the animals.~~

Existing law provides that any person who has been convicted of certain crimes regarding cruelty to animals and the failure to care for

animals, and who within a specified period after conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal, is guilty of a public offense punishable by a \$1,000 fine. Existing law authorizes the court to reduce the duration of the mandatory ownership prohibition if the defendant files a petition seeking that order and, at the subsequent hearing, establishes probable cause to believe specified facts, including that he or she does not present a danger to animals and has the ability to properly care for all the animals in his or her care. Existing law also authorizes the court to exempt owners of livestock from these restrictions if the defendant files a petition to establish that the imposition of these restrictions would result in substantial or undue economic hardship to the defendant's livelihood and that the defendant has the ability to properly care for all livestock in his or her care.

This bill would require a defendant who files a petition seeking to reduce the duration of the mandatory ownership prohibition or an exemption, as described above, to establish the basis for granting the relief by a preponderance of the evidence.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.1 of the Penal Code is amended to
2 read:
3 597.1. (a) Every owner, driver, or keeper of any animal who
4 permits the animal to be in any building, enclosure, lane, street,
5 square, or lot of any city, county, city and county, or judicial district
6 without proper care and attention is guilty of a misdemeanor. Any
7 peace officer, humane society officer, or animal control officer
8 shall take possession of the stray or abandoned animal and shall
9 provide care and treatment for the animal until the animal is
10 deemed to be in suitable condition to be returned to the owner.
11 When the officer has reasonable grounds to believe that very
12 prompt action is required to protect the health or safety of the
13 animal or the health or safety of others, the officer shall
14 immediately seize the animal and comply with subdivision (f). In
15 all other cases, the officer shall comply with the provisions of
16 subdivision (g). The full cost of caring for and treating any animal
17 properly seized under this subdivision or pursuant to a search

1 warrant shall constitute a lien on the animal and the animal shall
2 not be returned to its owner until the charges are paid, if the seizure
3 is upheld pursuant to this section.

4 (b) Every sick, disabled, infirm, or crippled animal, except a
5 dog or cat, that is abandoned in any city, county, city and county,
6 or judicial district may be killed by the officer if, after a reasonable
7 search, no owner of the animal can be found. It shall be the duty
8 of all peace officers, humane society officers, and animal control
9 officers to cause the animal to be killed or rehabilitated and placed
10 in a suitable home on information that the animal is stray or
11 abandoned. The officer may likewise take charge of any animal,
12 including a dog or cat, that by reason of lameness, sickness,
13 feebleness, or neglect, is unfit for the labor it is performing, or that
14 in any other manner is being cruelly treated, and provide care and
15 treatment for the animal until it is deemed to be in a suitable
16 condition to be returned to the owner. When the officer has
17 reasonable grounds to believe that very prompt action is required
18 to protect the health or safety of an animal or the health or safety
19 of others, the officer shall immediately seize the animal and comply
20 with subdivision (f). In all other cases, the officer shall comply
21 with subdivision (g). The full cost of caring for and treating any
22 animal properly seized under this subdivision or pursuant to a
23 search warrant shall constitute a lien on the animal and the animal
24 shall not be returned to its owner until the charges are paid.

25 (c) (1) Any peace officer, humane society officer, or animal
26 control officer shall convey all injured cats and dogs found without
27 their owners in a public place directly to a veterinarian known by
28 the officer to be a veterinarian who ordinarily treats dogs and cats
29 for a determination of whether the animal shall be immediately
30 and humanely destroyed or shall be hospitalized under proper care
31 and given emergency treatment.

32 (2) If the owner does not redeem the animal within the locally
33 prescribed waiting period, the veterinarian may personally perform
34 euthanasia on the animal. If the animal is treated and recovers from
35 its injuries, the veterinarian may keep the animal for purposes of
36 adoption, provided the responsible animal control agency has first
37 been contacted and has refused to take possession of the animal.

38 (3) Whenever any animal is transferred to a veterinarian in a
39 clinic, such as an emergency clinic that is not in continuous

1 operation, the veterinarian may, in turn, transfer the animal to an
2 appropriate facility.

3 (4) If the veterinarian determines that the animal shall be
4 hospitalized under proper care and given emergency treatment,
5 the costs of any services that are provided pending the owner's
6 inquiry to the responsible agency, department, or society shall be
7 paid from the dog license fees, fines, and fees for impounding dogs
8 in the city, county, or city and county in which the animal was
9 licensed or, if the animal is unlicensed, shall be paid by the
10 jurisdiction in which the animal was found, subject to the provision
11 that this cost be repaid by the animal's owner. The full cost of
12 caring for and treating any animal seized under this subdivision
13 shall constitute a lien on the animal and the animal shall not be
14 returned to the owner until the charges are paid. No veterinarian
15 shall be criminally or civilly liable for any decision that he or she
16 makes or for services that he or she provides pursuant to this
17 subdivision.

18 (d) An animal control agency that takes possession of an animal
19 pursuant to subdivision (c) shall keep records of the whereabouts
20 of the animal from the time of possession to the end of the animal's
21 impoundment, and those records shall be available for inspection
22 by the public upon request for three years after the date the animal's
23 impoundment ended.

24 (e) Notwithstanding any other provision of this section, any
25 peace officer, humane society officer, or any animal control officer
26 may, with the approval of his or her immediate superior, humanely
27 destroy any stray or abandoned animal in the field in any case
28 where the animal is too severely injured to move or where a
29 veterinarian is not available and it would be more humane to
30 euthanize the animal.

31 (f) Whenever an officer authorized under this section seizes or
32 impounds an animal based on a reasonable belief that prompt action
33 is required to protect the health or safety of the animal or the health
34 or safety of others, the officer shall, prior to the commencement
35 of any criminal proceedings authorized by this section, provide
36 the owner or keeper of the animal, if known or ascertainable after
37 reasonable investigation, with the opportunity for a postseizure
38 hearing to determine the validity of the seizure or impoundment,
39 or both.

1 (1) The agency shall cause a notice to be affixed to a
2 conspicuous place where the animal was situated or personally
3 deliver a notice of the seizure or impoundment, or both, to the
4 owner or keeper within 48 hours, excluding weekends and holidays.
5 The notice shall include all of the following:

6 (A) The name, business address, and telephone number of the
7 officer providing the notice.

8 (B) A description of the animal seized, including any
9 identification upon the animal.

10 (C) The authority and purpose for the seizure, or impoundment,
11 including the time, place, and circumstances under which the
12 animal was seized.

13 (D) A statement that, in order to receive a postseizure hearing,
14 the owner or person authorized to keep the animal, or his or her
15 agent, shall request the hearing by signing and returning an
16 enclosed declaration of ownership or right to keep the animal to
17 the agency providing the notice within 10 days, including weekends
18 and holidays, of the date of the notice. The declaration may be
19 returned by personal delivery or mail.

20 (E) A statement that the full cost of caring for and treating any
21 animal properly seized under this section is a lien on the animal
22 and that the animal shall not be returned to the owner until the
23 charges are paid, and that failure to request or to attend a scheduled
24 hearing shall result in liability for this cost.

25 (2) The postseizure hearing shall be conducted within 48 hours
26 of the request, excluding weekends and holidays. The seizing
27 agency may authorize its own officer or employee to conduct the
28 hearing if the hearing officer is not the same person who directed
29 the seizure or impoundment of the animal and is not junior in rank
30 to that person. The agency may utilize the services of a hearing
31 officer from outside the agency for the purposes of complying with
32 this section.

33 (3) Failure of the owner or keeper, or of his or her agent, to
34 request or to attend a scheduled hearing shall result in a forfeiture
35 of any right to a postseizure hearing or right to challenge his or
36 her liability for costs incurred.

37 (4) The agency, department, or society employing the person
38 who directed the seizure shall be responsible for the costs incurred
39 for caring and treating the animal, if it is determined in the
40 postseizure hearing that the seizing officer did not have reasonable

1 grounds to believe very prompt action, including seizure of the
2 animal, was required to protect the health or safety of the animal
3 or the health or safety of others. If it is determined the seizure was
4 justified, the owner or keeper shall be personally liable to the
5 seizing agency for the full cost of the seizure and care of the
6 animal. The charges for the seizure and care of the animal shall
7 be a lien on the animal. The animal shall not be returned to its
8 owner until the charges are paid and the owner demonstrates to
9 the satisfaction of the seizing agency or the hearing officer that
10 the owner can and will provide the necessary care for the animal.

11 (g) Where the need for immediate seizure is not present and
12 prior to the commencement of any criminal proceedings authorized
13 by this section, the agency shall provide the owner or keeper of
14 the animal, if known or ascertainable after reasonable investigation,
15 with the opportunity for a hearing prior to any seizure or
16 impoundment of the animal. The owner shall produce the animal
17 at the time of the hearing unless, prior to the hearing, the owner
18 has made arrangements with the agency to view the animal upon
19 request of the agency, or unless the owner can provide verification
20 that the animal was humanely destroyed. Any person who willfully
21 fails to produce the animal or provide the verification is guilty of
22 an infraction, punishable by a fine of not less than two hundred
23 fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

24 (1) The agency shall cause a notice to be affixed to a
25 conspicuous place where the animal was situated or personally
26 deliver a notice stating the grounds for believing the animal should
27 be seized under subdivision (a) or (b). The notice shall include all
28 of the following:

29 (A) The name, business address, and telephone number of the
30 officer providing the notice.

31 (B) A description of the animal to be seized, including any
32 identification upon the animal.

33 (C) The authority and purpose for the possible seizure or
34 impoundment.

35 (D) A statement that, in order to receive a hearing prior to any
36 seizure, the owner or person authorized to keep the animal, or his
37 or her agent, shall request the hearing by signing and returning the
38 enclosed declaration of ownership or right to keep the animal to
39 the officer providing the notice within two days, excluding
40 weekends and holidays, of the date of the notice.

1 (E) A statement that the cost of caring for and treating any
2 animal properly seized under this section is a lien on the animal,
3 that any animal seized shall not be returned to the owner until the
4 charges are paid, and that failure to request or to attend a scheduled
5 hearing shall result in a conclusive determination that the animal
6 may properly be seized and that the owner shall be liable for the
7 charges.

8 (2) The preseizure hearing shall be conducted within 48 hours,
9 excluding weekends and holidays, after receipt of the request. The
10 seizing agency may authorize its own officer or employee to
11 conduct the hearing if the hearing officer is not the same person
12 who requests the seizure or impoundment of the animal and is not
13 junior in rank to that person. The agency may utilize the services
14 of a hearing officer from outside the agency for the purposes of
15 complying with this section.

16 (3) Failure of the owner or keeper, or his or her agent, to request
17 or to attend a scheduled hearing shall result in a forfeiture of any
18 right to a preseizure hearing or right to challenge his or her liability
19 for costs incurred pursuant to this section.

20 (4) The hearing officer, after the hearing, may affirm or deny
21 the owner's or keeper's right to custody of the animal and, if
22 reasonable grounds are established, may order the seizure or
23 impoundment of the animal for care and treatment.

24 (h) If any animal is properly seized under this section or pursuant
25 to a search warrant, the owner or keeper shall be personally liable
26 to the seizing agency for the full cost of the seizure and care of the
27 animal.

28 Further, if the charges for the seizure or impoundment and any
29 other charges permitted under this section are not paid within 14
30 days of the seizure, or if the owner, within 14 days of notice of
31 availability of the animal to be returned, fails to pay charges
32 permitted under this section and take possession of the animal, the
33 animal shall be deemed to have been abandoned and becomes the
34 property of the seizing agency.

35 (i) If the animal requires veterinary care and the humane society
36 or public agency is not assured, within 14 days of the seizure of
37 the animal, that the owner will provide the necessary care, the
38 animal shall not be returned to its owner and shall be deemed to
39 have been abandoned and becomes the property of the seizing
40 agency. A veterinarian may humanely destroy an impounded

1 animal without regard to the prescribed holding period when it has
2 been determined that the animal has incurred severe injuries or is
3 incurably crippled. A veterinarian also may immediately humanely
4 destroy an impounded animal afflicted with a serious contagious
5 disease unless the owner or his or her agent immediately authorizes
6 treatment of the animal by a veterinarian at the expense of the
7 owner or agent.

8 (j) No animal properly seized under this section or pursuant to
9 a search warrant shall be returned to its owner until the owner can
10 demonstrate to the satisfaction of the seizing agency or hearing
11 officer that the owner can and will provide the necessary care for
12 the animal.

13 (k) (1) ~~Prior~~ *In the case of adoptable cats and dogs, prior to*
14 *the final disposition of any criminal charges, the seizing agency*
15 *or prosecuting attorney may file a petition in a criminal action*
16 *requesting that, prior to that final disposition, the court issue an*
17 *order forfeiting the animal to the city, county, or seizing agency.*
18 *The petitioner shall serve a true copy of the petition upon the*
19 *defendant and the prosecuting attorney.*

20 (2) Upon receipt of the petition, the court shall set a hearing on
21 the petition. The hearing shall be conducted within 14 days after
22 the filing of the petition, or as soon as practicable.

23 (3) The petitioner shall have the burden of establishing ~~by a~~
24 ~~preponderance of the evidence~~ *beyond a reasonable doubt* that,
25 even in the event of an acquittal of the criminal charges, the owner
26 will not legally be permitted to retain the animal in question. If
27 the court finds that the petitioner has met its burden, the court shall
28 order the immediate forfeiture of the animal as sought by the
29 petition.

30 (4) Nothing in this subdivision is intended to authorize a seizing
31 agency or prosecuting attorney to file a petition to determine an
32 owner's ability to legally retain an animal pursuant to paragraph
33 (3) of subdivision (l) if a petition has previously been filed pursuant
34 to this subdivision.

35 (l) (1) Upon the conviction of a person charged with a violation
36 of this section, or Section 597 or 597a, all animals lawfully seized
37 and impounded with respect to the violation shall be adjudged by
38 the court to be forfeited and shall thereupon be transferred to the
39 impounding officer or appropriate public entity for proper adoption
40 or other disposition. A person convicted of a violation of this

1 section shall be personally liable to the seizing agency for all costs
2 of impoundment from the time of seizure to the time of proper
3 disposition. Upon conviction, the court shall order the convicted
4 person to make payment to the appropriate public entity for the
5 costs incurred in the housing, care, feeding, and treatment of the
6 seized or impounded animals. Each person convicted in connection
7 with a particular animal may be held jointly and severally liable
8 for restitution for that particular animal. The payment shall be in
9 addition to any other fine or sentence ordered by the court.

10 (2) The court may also order, as a condition of probation, that
11 the convicted person be prohibited from owning, possessing, caring
12 for, or residing with, animals of any kind, and require the convicted
13 person to immediately deliver all animals in his or her possession
14 to a designated public entity for adoption or other lawful disposition
15 or provide proof to the court that the person no longer has
16 possession, care, or control of any animals. In the event of the
17 acquittal or final discharge without conviction of the person
18 charged, if the animal is still impounded, the animal has not been
19 previously deemed abandoned pursuant to subdivision (h), and the
20 court has not ordered that the animal be forfeited pursuant to
21 subdivision (k), the court shall, on demand, direct the release of
22 seized or impounded animals to the defendant upon a showing of
23 ~~all of the following:~~ *proof of ownership.*

24 ~~(A) Proof of ownership.~~

25 ~~(B) Proof that all of the charges for the cost of seizure and care~~
26 ~~of the animal for the entire duration of the matter have been paid.~~

27 ~~(C) Proof that the owner can legally retain and possess all~~
28 ~~animals in question.~~

29 (3) Any questions regarding ownership shall be determined in
30 a separate hearing by the court where the criminal case was finally
31 adjudicated and the court shall hear testimony from any persons
32 who may assist the court in determining ownership of the animal.
33 If the owner is determined to be unknown or the owner is
34 prohibited or unable to retain possession of the animals for any
35 reason, the court shall order the animals to be released to the
36 appropriate public entity for adoption or other lawful disposition.
37 This section is not intended to cause the release of any animal,
38 bird, reptile, amphibian, or fish seized or impounded pursuant to
39 any other statute, ordinance, or municipal regulation. This section

1 shall not prohibit the seizure or impoundment of animals as
2 evidence as provided for under any other provision of law.

3 (m) It shall be the duty of all peace officers, humane society
4 officers, and animal control officers to use all currently acceptable
5 methods of identification, both electronic and otherwise, to
6 determine the lawful owner or caretaker of any seized or
7 impounded animal. It shall also be their duty to make reasonable
8 efforts to notify the owner or caretaker of the whereabouts of the
9 animal and any procedures available for the lawful recovery of the
10 animal and, upon the owner's and caretaker's initiation of recovery
11 procedures, retain custody of the animal for a reasonable period
12 of time to allow for completion of the recovery process. Efforts to
13 locate or contact the owner or caretaker and communications with
14 persons claiming to be the owner or caretaker shall be recorded
15 and maintained and be made available for public inspection.

16 SEC. 2. Section 597.9 of the Penal Code is amended to read:

17 597.9. (a) Except as provided in subdivision (c) or (d), any
18 person who has been convicted of a misdemeanor violation of
19 subdivision (a) or (b) of Section 597, or Section 597a, 597b, 597h,
20 597j, 597s, or 597.1, and who, within five years after the
21 conviction, owns, possesses, maintains, has custody of, resides
22 with, or cares for any animal is guilty of a public offense,
23 punishable by a fine of one thousand dollars (\$1,000).

24 (b) Except as provided in subdivision (c) or (d), any person who
25 has been convicted of a felony violation of subdivision (a) or (b)
26 of Section 597, or Section 597b or 597.5, and who, within 10 years
27 after the conviction, owns, possesses, maintains, has custody of,
28 resides with, or cares for any animal is guilty of a public offense,
29 punishable by a fine of one thousand dollars (\$1,000).

30 (c) (1) In cases of owners of livestock, as defined in Section
31 14205 of the Food and Agricultural Code, a court may, in the
32 interest of justice, exempt a defendant from the injunction required
33 under subdivision (a) or (b), as it would apply to livestock, if the
34 defendant files a petition with the court to establish, and does
35 establish by a preponderance of the evidence, that the imposition
36 of the provisions of this section would result in substantial or undue
37 economic hardship to the defendant's livelihood and that the
38 defendant has the ability to properly care for all livestock in his
39 or her possession.

(2) Upon receipt of a petition from the defendant, the court shall set a hearing to be conducted within 30 days after the filing of the petition. The petitioner shall serve a copy of the petition upon the prosecuting attorney 10 calendar days prior to the requested hearing. The court shall grant the petition for exemption from subdivision (a) or (b) unless the prosecuting attorney shows by a preponderance of the evidence that either or both of the criteria for exemption under this subdivision are untrue.

(d) (1) A defendant may petition the court to reduce the duration of the mandatory ownership prohibition. Upon receipt of a petition from the defendant, the court shall set a hearing to be conducted within 30 days after the filing of the petition. The petitioner shall serve a copy of the petition upon the prosecuting attorney 10 calendar days prior to the requested hearing. At the hearing, the petitioner shall have the burden of establishing by a preponderance of the evidence all of the following:

(A) He or she does not present a danger to animals.

(B) He or she has the ability to properly care for all animals in his or her possession.

(C) He or she has successfully completed all classes or counseling ordered by the court.

(2) If the petitioner has met his or her burden, the court may reduce the mandatory ownership prohibition and may order that the defendant comply with reasonable and unannounced inspections by animal control agencies or law enforcement.